1950

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File No. S. Kan 1/50

Legal DEPARTMENT

BRANCH

Kanara Suit

Subject:—

Civil Suit No. 166 of 1948

Krishna Ramanath Bhat - - - Plff

Vs

The Province of Bombay Defe.

For a declaration Pltff is not entitled to recover from the Pltffs or his sureties any amount on account of the ferry contract dues and for permanent injunction

Civil Appeal No. 225 of 1950

P.S.

E

S. Kanara 1/50

File No.

Std. Scott, Slip 24 A—1626—1,00,000—6-49

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In the Court of the Civil Judge, S.D. Karwar.

Civil Suit No.166 of 1948. Exh. 5.

Krishna Ramnath Bhat of Venkatapur, Bhatkal
....Plaintiff.

Vs.

The Province of Bombay. Defendant.

Apllication submitted on behalf of the Plaintiff:-

The plaintiff has filed this suit for declaration that the plaintiff is not liable to pay anything on account of the suit ferry contract for reasons detailed in the plaint and also for a permanent injunction restraining the defendant from recovering any amount from the plaintiff and his sureties on that account. It is also the case of the plaintiff that it is not the plaintiff that owes any amount to the defendant but it is the defendant that owes to the plaintiff Rs.534-5-0. Still the defendant has already started coercive meansures for recovery of Rs.8117-7-0 from the palintiff and his sureties as arrears of Land Revenue through the Collector of Kanara. It will be agreat hardship to the plaintiff and his sureties and they will suff irreparable losses if their properties are sold before their liablity itself is finally decided in the suit. It is, therefore, prayed that this Court be pleased to issue a temporary injunction against the defendant restraining the defendant from proceeding with the recovery proceedings started by the Collector of Kanara against the Plaintiff and his sureties to recover the arreaps in respect of the Ferry contract of Divgiferyy in 1947-48 till the disposal of this suit and as the matter is very urgent notice may dispended with in the first instance. The order of injunction may be served on the Collector of Kanara under special process.

Sd:-Krisha R. Bhat.

I, Krishna Ramanath Bhat, now residing at Venkatapur in Bhatkal Petha, state on solemn affirmation that the contents of the above application and also the contents of the plaint in this suit are true to may knowledge and belief,

Signed in court on 29.11.1948.
Sd. Krishna R.Bhat,

Presented on 29.11.1948.
Sd.M.G.Kasbekar.
Pleader.

Solemnly affirmed before me by Krishna Ramanath Bhat who is identified before me by Pleader Mr.P.M.Prabhu who is personally known to me. Dated this 29th day of November 1948.

Sd.H.V.Naik.
Clerk of the Court,
Court of the Civil Judge, (S.D), Karwar.

Presented on 29.11.1948.

Sd.M.G.Kasbekar
Pleader.

30.11.1948.
Sd.H.V.N.
C.O.C.

Issue temporary injunction as prayed for and a notice to show cause.
Urgent process.

30.11.1948.

Sd:N.V.R.
Civil Judge, S.D.Karwar.

In the Court of the Civil Judge, Senior Division at Karwar.

Civil Suit No. 166 of 1948.

Krishna Ramanath Bhat, aged 35, Goud-Saraswat Brahmin, Contractor, ~~Contractor~~ residing in Venkatapur, Bhatkal Petha, Dist. North Kanara. — Plaintiff.

Vs.

The Province of Bombay. — Defendant.

Following is the written statement of the Defendant - Province of Bombay.

1. Paragraph 1 of the plaint is admitted.

2. With regard to paragraph 2 of the plaint it is submitted that there was no legally enforceable agreement between the plaintiff and this defendant. The agreement dated the 2nd March 1947 was between the plaintiff and the Executive Engineer in his official capacity; that agreement is in contravention of the provisions of section 175 sub-section (3) of the Government of India Act 1935 and is, therefore, invalid in law and inadmissible in evidence.

3. This defendant submits that there was no condition that Government should supply the plaintiff with two workable and convenient jungals with five boats, two platforms and eight foot-boards as alleged in paragraph 2 of the plaint. Government did supply the plaintiff with all the equipment which was at the ferry in the preceding year and this ~~included~~ comprised five jungal boats, two platforms and six foot-boards, and which was sufficient to maintain two jungals in order. But it was not incumbent on Government to supply him with equipment necessary to maintain two jungals. The plaintiff's contentions to the contrary are not admitted.

4. The allegations in paragraph 3 of the plaint that one of the two jungals supplied by Government was not in good condition and not fit for the purpose of the ferry is untrue and not admitted. It is also not true that the P.W.D.Officers did not heed to the plaintiff's complaints to repair the second jungal or redress the plaintiff's grievance. The Defendant submits that it was due to plaintiff's own fault that the second jungal went out of order when one of the boats broke-down on the 20th May 1947. The Officers of the Defendant had given every facility to the plaintiff to maintain the two jungals in working order. The allegation that the plaintiff sufferred a great loss on this account is denied.

5. On the 16th June 1947 a new jungal was given to him in place of the one which had gone out of order on account of the plaintiff's own fault. It is denied that this second jungal was bulky or inconvenient or that it could not be used for the purpose of transporting heavy vehicles. It is submitted that the second jungal was working satisfactorily and was suitable for transporting heavy trucks and and motor buses across the ferry without any risk or danger.

6. The allegations in paragraph 4 of the plaint are denied. There was no question of terminating the plaintiff's contract nor was there any question of compensating him for the loss alleged to have been suffered by him. The allegation that the Superintending Engineer Mr. Little had promised the plaintiff on behalf of Government that no interest would be charged on the instalments due from the plaintiff and that he would be given a remission in the bid amount are all denied. The said Mr. Little had not given any such promises or assurances to the plaintiff as alleged and assuming ~~that~~ without admitting

that he did so, this defendant is not bound by whatever promises or assurances the said Mr.Little might have given to the plaintiff.

7. With regard to the allegations in paragraph 5 of the plaint it is submitted that no guarantee for the traffic was given to the plaintiff when the ferry was farmed out to him and this defendant is not responsible if the plaintiff did not get the expected traffic realizations. This defendant was not responsible for the cut in the petrol ration and in any event it is denied that the plaintiff sufferred any loss on account of the cut in the petrol ration.

8. The allegations in paragraph 6 of the plaint are denied. There were no such promises or recommendations from Mr. Little as alleged by the plaintiff. The plaintiff having made a default in the payment of the instalment due from him the P.W.D. Officers were justified in starting recovery proceedings against him. His contention to the contrary in paragraph 7 of the plaint is not true and is hereby denied.

9. The contentions in paragraphs 8, 9, and 10 are denied. It is not true that the plaintiff sufferred a loss of Rs 5,000/- because he was deprived of the use of the second jungal as alleged. It is also not true that he sufferred a loss of Rs 3250/- on account of reduction in the petrol rationing. The plaintiff is not entitled to claim Rs 539--5-0 or any amount from Government. On the contrary, the plaintiff and his surities are liable to pay this defendant Rs 5800-15-0 as principle with interest on that amount as balance due out of the bid amount of Rs. 12,001/- which amount Government is entitled to recover as arrears of land revenue.

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10. The plaintiff is not entitled to any relief.

It is, therefore, submitted that the suit be dismissed with costs.

District Government Pleader

I, , District Government Pleader, , do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This varification is made at _____ on the _____ day of _____ 194

District Government Pleader.

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O.S.No. 166 of 1948.

Proposed issues.

1. Whether the agreement in suit is valid and binding on the defendant in view of section 175(3) of the Government of India Act, 1935?
2. What were the terms of the contract?
3. Does. plff prove that defendant committed breach of any and which terms of the contract?
4. Whether plaintiff proves that he suffered any and to what damages ~~and~~ due to such breach of terms?
5. Whether plaintiff proves that he is not liable to pay interest on the balance due to Government?
6. What is the amount due to Government?
7. What is due to plaintiff ~~and~~ after deducting the same due to Government?
8. Is plaintiff entitled to injunction sought?
9. What order and decree?

2.3.1950.

D.G.P.Karwar.

Suits.

Kanara.

For a declaration that Government is not entitled to recover from the plaintiff or his sureties any amount on account of the ferry contract dues and for a permanent injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 12502.

Bombay Castle, 7th November 1949.

Endorsement from the Superintending Engineer, Southern Circle, addressed to the Secretary Political Works Department, No. G-59, dated 8th April 1949—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, AT KARWAR.

CIVIL SUIT No. 166 OF 1948.

Krishna Ramanath Bhat ... ... Plaintiff;

versus

The Province of Bombay ... Defendant.

Unofficial reference from the Public Works Department, dated 28th April 1949, forwarding the above.

Memorandum to the District Government Pleader, Karwar, No. 11252, dated 8th October 1949—Forwarding a copy of the brief and two copies of the written statement with case papers in advance.

[*P.T.O.*

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R., No. 12502, L. D., dated the 7th November 1949.

To

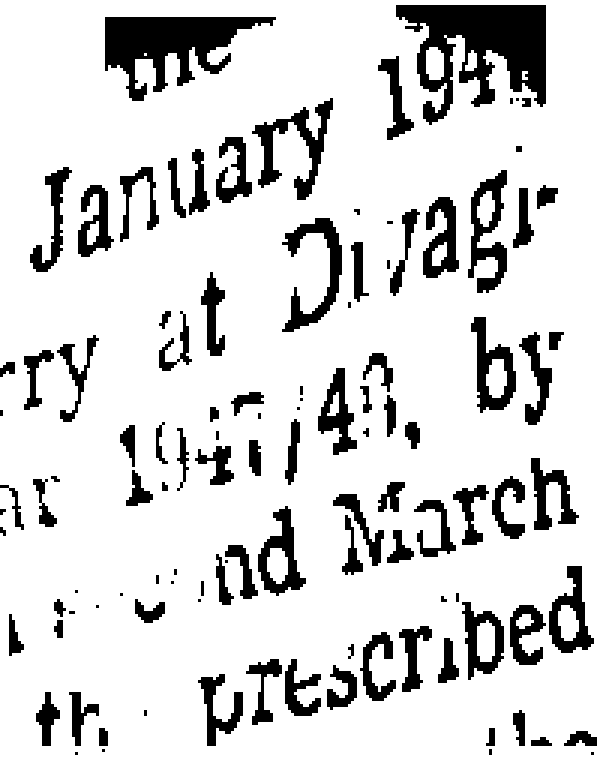
*The Public Works Department,
*The Superintending Engineer, Southern Circle,
*The Executive Engineer, Kanara Division,
The District Government Pleader, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

- Submitted after issue
2 File in S. Kanara/50 (new file)"



KANARA CIVIL SUIT No. 166 OF 1948.

Krishna Ramnath Bhat *vs.* The Province of Bombay.

Chronological Statement of Facts.

The suit is for a declaration that Government is not entitled to recover from the plaintiff or his sureties any amount on account of the Ferry contract dues, and for a permanent injunction restraining Government from recovering any amount by coercive measures. The plaintiff also asks for a decree of Rs. 539-5-0 with interest thereon at 6 per cent. per annum against Government.

2. The plaintiff is a ferry Contractor in the Kanara District. At a public auction held by the Public Works Department Officers on the 30th January 1947, he purchased the right to run the ferry at Divagi-Manki in Kumtha Taluka for the year 1947/48, by giving the highest bid of Rs. 12,001. On second March 1947 he entered into an agreement in the prescribed form with the Executive Engineer. After the execution of the agreement the plaintiff was supplied with the necessary equipment for running the ferry namely, five *jungal* boats, two platforms and six foot-boards, which were in use at the ferry in the preceding year. These accessories were supplied by Government to enable the ferry contractor to maintain at least two *jungals*—each consisting of a wooden platform mounted on 2 boats and used for carrying motor cars and trucks across the river—in working order at the ferry. The fifth boat was a spare boat to be used in the event of any one of the four boats going out of order or needing repairs. According to the auction conditions which were read out and signed by the plaintiff at the time of the auction, minor repairs such as coal-tarring the platforms, re-stitching the boats, plugging holes etc., were to be carried out by the ferry contractor, while major repairs including all replacements were to be done by Government.

File II page 50.

C. S. F.-2.

File I page 47.

3. The plaintiff commenced working the ferry on the 1st of April 1947. On 1st June 1947, he sent a telegram to the Superintending Engineer, Belgaum, complaining that of the two *jungals* supplied to him one was 'quite useless' that the local officers neglected to repair it though repeatedly requested to do so, that the plaintiff was, therefore, incurring heavy losses and would not pay the full instalment. On receipt of this telegram the Superintending Engineer instructed the Executive Engineer by his telegram dated the 8th June 1947, to attend to the repairs immediately and inform the plaintiff of the action taken by him on his letter No. G-59, dated the 13th June 1947.

File III. p. 15.

File III page 17.

File III page 19.

4. On the 18th June 1947 the plaintiff sent an application to the Executive Engineer, Kanara District, stating that one of the *jungals* supplied to him was useless, that he used it with difficulty for about one and a quarter months after which he had to discard it, that he had to manage with only one *jungal* which involved him in heavy losses because he could not take a larger number of buses and trucks across the river and which, therefore, diverted the traffic to another ferry, that the second new *jungal* given to him on the 16th June 1947, by the P.W.D. Officers was bulky, inconvenient and not workable and could not

KANARA CIVIL SUIT No. 166 OF 1948.

Krishna Ramnath Bhat *vs.* The Province of Bombay.

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KANARA CIVIL SUIT No. 166 OF 1943.

Krishna Ramnath Bhat *vs.* The Province of Bombay.

Chronological Statement of Facts.

The suit is for a declaration that Government is not entitled to recover from the plaintiff or his sureties any amount on account of the Ferry contract dues, and for a permanent injunction restraining Government from recovering any amount by coercive measures. The plaintiff also asks for a decree of Rs. 539-5-0 with interest thereon at 6 per cent. per annum against Government.

2. The plaintiff is a ferry Contractor in the Kanara District. At a public auction held by the Public Works Department Officers on the 30th January 1947, he purchased the right to run the ferry at Divagi-Manki in Kumtha Taluka for the year 1947/48, by giving the highest bid of Rs. 12,001. On second March 1947 he entered into an agreement in the prescribed form with the Executive Engineer. After the execution of the agreement the plaintiff was supplied with the necessary equipment for running the ferry namely, five *jungal* boats, two platforms and six foot-boards, which were in use at the ferry in the preceding year. These accessories were supplied by Government to enable the ferry contractor to maintain at least two *jungals*—each consisting of a wooden platform mounted on 2 boats and used for carrying motor cars and trucks across the river—in working order at the ferry. The fifth boat was a spare boat to be used in the event of any one of the four boats going out of order or needing repairs. According to the auction conditions which were read out and signed by the plaintiff at the time of the auction, minor repairs such as coal-tarring the platforms, re-stitching the boats, plugging holes etc., were to be carried out by the ferry contractor, while major repairs including all replacements were to be done by Government.

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C. S. F.-2.

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KANARA CIVIL SUIT NO. 166 OF 1948.

Krishna Ramnath Bhat *vs.* The Province of Bombay.

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C. S. F.-2.

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File III. p. 15.

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be used without grave risks to the vehicles mounted thereon, that the bus-drivers refused to mount their vehicles on this new *jungal*, that consequently he could not run the ferry without loss and requested that either his contract should be terminated or he should be supplied with another suitable and workable *jungal*. The Superintending Engineer to whom also a copy of this application was sent by the plaintiff, directed the Executive Engineer on the 24th June 1947, to submit a detailed report on each point in the plaintiff's application. The plaintiff made similar complaints in his applications dated the 3rd July 1947 and 10th July 1947 to the Superintending Engineer.

File III. p. 31. (C.S.F.-3).

File III. pp. 33—61.

5. The Executive Engineer visited the Ferry on the 10th July 1947, and found that both the *jungals* were working satisfactorily and that the grievance made by the plaintiff of the second *jungal* being unworkable and risky was not genuine or true. He informed the plaintiff accordingly in his letter No. G-59, dated the 15th July 1947.

File III. p. 71.

6. On 22nd August 1947, the Executive Engineer, made a detailed report to the Superintending Engineer on the complaints made by the plaintiff in his several applications. In that report, the Executive Engineer pointed out that in order to avoid his liability altogether or at least to get some concessions and remissions in the payment of his dues to Government, the plaintiff had tried to see from the beginning that the second *jungal* did not work. On the 21st August 1947, the plaintiff during an interview with the Superintending Engineer, represented (1) that the *jungal* boats were leaking heavily but were not repaired, (2) that the *jungals* supplied to him were old and not in a fit condition and (3) that he should get some concession in the payment of instalment of the bid amount. In his endorsement No. G-59, dated the 22nd August 1947, the Superintending Engineer asked the Executive Engineer to submit a detailed report on the points made by the plaintiff. In reply, the Executive Engineer sent a further report on the 21st October 1947.* On 17th November 1947, the Superintending Engineer informed the plaintiff that the Executive Engineer had been asked to take steps to repair the boat and that pending final decision on his representation he should pay the arrears of instalments of ferry bid amount to Government.

File III. p. 121.

File III. p. 135.

*File III. page 179.

File III. page 181.

7. On the 10th December 1947, the plaintiff submitted another application to the Superintending Engineer in which he claimed a remission of Rs. 4,800 in the bid amount on an altogether new ground namely that there had been a constant and heavy decrease in the motor traffic on the Kumta-Sirsi Road on account of a drastic cut in the petrol ration and that consequently, there had been a great reduction in the number of vehicles crossing the ferry every day. On 20th March 1948 he sent a similar application to the Executive Engineer claiming a remission of Rs. 3,000.

File III. p. 193.

File III. p. 223.

8. The plaintiff had in the meanwhile made default in the payment of instalments of the amount due from him to Government. The amount of Rs. 12,001 was payable by him in four instalments of Rs. 3,000-4-0 each due on 15th June 1947, 15th September 1947, 15th December 1947, and 15th March 1948. Up to the 29th February 1948, he had paid only Rs. 4,175 towards the amount of the first three instalments which had then become due. He

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had also become liable to pay Rs. 291-7-0 as interest at 12 per cent. on the over-due instalments. The total dues thus amount to Rs. 5,117-3-0 and in addition the fourth instalment of Rs. 3,000-4-0 which had become due on the 15th March 1948. Therefore on the 24th March 1948, the Executive Engineer requested the Collector of Kanara to recover these dues from the plaintiff as arrears of land revenue. The plaintiff made further representations to the Executive Engineer and the Superintending Engineer, but on 1st July 1948 he was finally informed by the latter that his case had been fully considered and his request for remission could not be granted.

9. On 24th September 1948, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 29th November 1948, he filed the present suit in the court of the Civil Judge, Senior Division, Karwar.

Grounds of Defence.

It will be convenient to summarise at the outset the several contentions of the plaintiff in the plaint. It is contended :—

(1) that it was a condition in the ferry agreement between the plaintiff and Government that Government should supply the plaintiff with two *jungals* complete with boats, platforms and foot-boards and to keep them in good repairs at Government's cost ;

(2) that of the two *jungals* supplied by the P.W.D. Officers one was not in good condition or working order and was not repaired although the plaintiff repeatedly requested the P.W.D. Officers, to do so ;

(3) that in consequence he had to manage with only one *jungal* till the 16th June 1947, which involved him in monetary loss ;

(4) that on the 15th June 1947, the old and unworkable *jungal* was replaced by another one but this new *jungal* was also bulky and inconvenient and could not be used because the platform was too large for the boats ;

(5) that in the course of his interviews with the Superintending Engineer, it was settled and agreed, that the plaintiff should be compensated for the loss sustained by him, that no interest should be charged on the instalments due from him, and that he should be given remission in the amount of the bid on account of the reduction in traffic in consequence of the cut in the petrol ration ;

(6) that the plaintiff had suffered a heavy loss on account of the reduced motor traffic after the drastic cut in the petrol rationing came into effect, and

(7) that the Public Works Department started against him proceedings for recovery of the amount in disregard of the promises and assurances given by the Superintending Engineer to the plaintiff.

2. The plaintiff, therefore, claims to set off against his own dues to Government Rs. 5,000 on account of loss suffered by him owing to Government's alleged failure to supply him with a second *jungal* in working order. He also claims Rs. 3,250 on account of loss sustained by him as a result of the reduced motor traffic caused by the reduction in the petrol ration for which he holds Government responsible, but he reduces his claim on this account to Rs. 1,000 "as a matter of grace."

3. Now the agreement executed by the plaintiff is in an old and obsolete form. The agreement has not been made in accordance with the provisions of Section 175 sub-section (3) of the Government of India Act, in that it has not been made by or on behalf of the Governor of Bombay. It is virtually an agreement between the plaintiff and the Executive Engineer, Kanara, in his official capacity. That Officer could execute agreement only on behalf of the Governor of Bombay, provided he was authorised to do so. This agreement not having been expressed to be made in the name of the Governor of Bombay and not executed on behalf of the Governor is invalid and not enforceable at law, and, therefore, neither party will be able to rely upon it. The Agreement will have, therefore, to be discarded. Independently of this agreement, however, there is some material on record to show the terms and conditions on which the plaintiff purchased the right to run the ferry at the auction sale. These terms and conditions are to be found in the accompaniments of the sale proclamation which are at pages 35-57 of file No. I.

All these terms and conditions were read out before and signed by the intending bidders including the plaintiff at the time of the auction sale which was held on 30th January 1947, and, therefore, they must be regarded as binding on the plaintiff. On reading these papers together it is not quite clear whether Government's obligation was to supply the ferry contractor with one *jungal* or two *jungals*. At page 9 of the file I there is a statement showing the number of passenger boats and the number of *jungal* boats to be maintained by the ferry contractor. Column 7 of this statement shows that the number of *jungal* boats to be supplied by Government at this particular ferry was five. At least four boats are required to maintain two *jungals* and, therefore, from this entry in column 7 of the statement the plaintiff might probably argue with some justification that Government was bound to supply him with at least five *jungal* boats to enable him to maintain two *jungals*. On the other hand, the note at page 37 of file 1 which was also read out at the auction sale and signed by the plaintiff, states as follows :—"One *jungal* as a minimum with the required number of boats and platform for the same will be supplied by Government and these shall be maintained in good order by the ferry farmer. If possible, a second *jungal* with accessories will be supplied by Government. If the ferry farmer uses additional *jungal* with *jungal* boats other than the one supplied by the Government, the same shall have to be got passed by the Executive Engineer, or his subordinate and no rent shall be paid therefore. Galgalling the *jungal* boats supplied by Government will be done departmentally." This note might indicate that Government's liability was to supply the plaintiff with accessories necessary to maintain only one *jungal*, that is two boats and one platform and that a second *jungal* would be supplied *ex-gratia* only if it was possible, but that it was not incumbent on Government to supply him with a second *jungal*. It should, therefore, be contended that there was no condition that Government should supply the plaintiff with two workable *jungals*, two platforms, and eight foot-boards as alleged by the plaintiff, and the mere fact that the accessories for running two *jungals* were actually handed over to him does not imply that Government was under any obligation to do so.

Government, had merely handed over to the plaintiff the entire equipment that was in existence at the ferry in the preceding year.

4. The plaintiff's real grievance, however, is not that Government did not supply him with two *jungals*. In paragraph 3 of the plaint he has admitted that when he started the ferry from the 1st April 1947, the P.W.D. Officers placed at his disposal two *jungals* and other articles with which he was to manage the ferry. His contention however, is that out of these *jungals* one was not in good order and was unfit to be used for the purpose of carrying trucks and motor buses across the ferry. He adds he had to use it with utmost difficulty and it completely went out of order in about the 2nd week of May 1947. He further contends it was on the 16th June 1947 that this defective *jungal* was replaced by another but this new *jungal* was also, according to the plaintiff, bulky and inconvenient and the platform was too large for the boats. In the circumstances, it is alleged that the plaintiff had to work with one *jungal* and had to incur heavy losses in consequence. All these contentions are misleading and incorrect. The facts regarding the second *jungal* are these. On the 1st of April 1947, five Government jungal boats numbers 15, 16, 17, 49 and 50, two platforms and six foot-boards which were actually in use at the ferry in the preceding year were handed over to the plaintiff. One *jungal* was formed with boats Nos. 16 and 17 and one platform, and the other was made with boats Nos. 49 and 50 and the other platform. Boat No. 15 was a spare boat which could be used whenever any of the four boats were taken out for repairs or oiling. On the 17th May 1947 the plaintiff was asked to remove Boat No. 16 for removing rotten planking and he did this by replacing it by spare Boat No. 15. By this time the oiling (or 'galgalling' as it is locally called) of the other boats had also become due and in order to expedite the oiling of the other boats the P.W.D. Officers obtained another spare Boat No. 51 from the adjoining Mirajan Ferry on the same river and gave it to the plaintiff who was asked to oil Boats Nos. 49 and 50 and then Boats Nos. 15 and 51, so that there would be two *jungals* all the time even while Boat No. 16 was under repairs. It is clear, from the report of the Executive Engineer dated 22nd August 1947 that the plaintiff did not carry out these instructions and did not take timely action to have these boats oiled and in the meantime Boat No. 17, which needed some major repairs, unexpectedly broke down on 28th May 1947. The plaintiff, intentionally delayed oiling the boats Nos. 15 and 51 till the 14th June 1947 and it was on account of this default on his part that the second *jungal* could not be used between the 28th May 1947 and 16th June 1947. This report as also the detailed report from the Deputy Engineer, dated the 3rd July 1947, proved beyond doubt that every possible help was given to the plaintiff to maintain the two *jungals* in working order, that his grievance that the P.W.D. Officers did not take prompt action to repair the defctive *jungal* is false, and that he has to thank himself for his inability to run the two *jungals* up to 16th June 1947.

File III. p. 121.

5. It is next contended by the plaintiff that the second new *jungal* which was given to him on the 16th June 1947 was also bulky and inconvenient and that the heavy motor vehicles like buses and trucks could not be mounted on the platform without grave

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risks to them and that for that reason the drivers of those vehicles refused to mount their vehicles on it. This contention also appears to be without substance and untenable. The Executive Engineer visited this ferry on the 10th of July 1947 and he found that both the *jungals* were working satisfactorily and the plaintiff's complaint was false. He himself saw two long wheel base trucks and two small wheel base motor trucks mounted on the newly repaired *jungal* without any trouble or hesitation on the part of the drivers. He himself crossed the ferry in the same *jungal* with the buses and was satisfied that the *jungal* in question was suite suitable for transporting double-joint buses without any fear or risk as apprehended by the plaintiff. He also found that many such double-joint buses had been carried across the ferry in the new *jungal* which was given to the ferry contractor after the 16th June 1947. The only defect which he detected in the second *jungal* was a small crack in one of the long beams of the platform and he instructed the Sub-Divisional Officer and the Sectional Officer on the spot to repair the same immediately, although it was a minor defect developed only the previous day. The Executive Engineer informed the plaintiff accordingly by his letter No. G-59 dated the 15th July 1947. In this connection, however, the plaintiff relies upon the extract of remarks from the Visitors' book of the Divgi ferry, made by the Executive Engineer on the 16th June 1947 when he visited the ferry between 12-30 p.m. and 1 p.m. The plaintiff puts his reliance upon the last sentence in this extract which is as follows :— File III. p. 71.

> "The *jungal* boats are of different types and the ferry farmer is specially instructed to be very cautious and careful in loading double joint buses on the same and avoid heavy weight buses loading as far as possible."

From this the plaintiff has tried to infer in his various applications that the second *jungal* was not convenient, at least, for heavy vehicles. This contention is also misleading because it does not take into account all the remarks made by the Executive Engineer in the Visitor's Book.
The extract is as under:—

> "One Jungal newly repaired and extended to accommodate lorry wheel base buses has been granted to ferry farmer since 16th June 1947 morning. One 174" wheel base truck No. BYX-1869 with a load weight of 2 tons in it and additional weight 1½ tons on the platform was loaded over the *jungal* to test the strength in my presence. So also one 174" wheel base bus No. 1545 of U.K.T. passenger was tried over the *jungal* in my presence. The ferry farmer was also present. The jungal was found to be quite safe and working satisfactorily. The *jungal* boats are of different types and the ferry farmer is specially instructed to be very cautious and careful in loading double joint buses on the same and avoid heavy weight bus loading as far as possible."

Reading these remarks as a whole it is clear that was second *jungal* supplied on the 16th June 1947 was working satisfactorily and was quite suitable for transporting all kinds of vehicles including heavy vehicles and that the Executive Engineer had merely cautioned the plaintiff to be careful while loading

heavy vehicles. These remarks cannot be interpreted to mean that the Executive Engineer considered this second *jungal* to be unsuitable for heavy traffic. He also found on his visit to ferry on the 10th July 1947 that the second *jungal* was working satisfactorily. Therefore, the plaintiff's contention that it was bulky and inconvenient is false and should be denied.

6. The next allegation of the plaintiff is that when he placed his grievance before the Superintending Engineer in the course of his interviews with him, the latter had assured him that he would be compensated for the loss sustained by him on account of the defective *jungal*, that no interest should be charged on the instalments due from him, and that he should be given a remission in the amount of the bid money on account of the reduction in the traffic in consequence of the cut in the petrol ration. What actually transpired between the plaintiff and the Superintending Engineer during the two interviews granted to him on 21st August 1947 and 25th November 1947 will be found in the Superintending Engineer's endorsement No. G-59 dated the 22nd August 1947 and his letter No. G-59 dated the 6th December 1947 addressed to the Executive Engineer. There is no evidence whatever to show that the Superintending Engineer had given the plaintiff any assurances as alleged by him for granting remissions and concessions to him. On the contrary, the Superintending Engineer Mr. E. P. Little called upon the plaintiff in his letter No. G-59 dated the 17th December 1947 to pay without further delay all the arrears of instalments due to Government pending final decisions on his representation. Moreover, the plaintiff's grievance of reduction in his earnings is also not true because as pointed out by the Executive Engineer in his letter No. G-59 dated 21st October 1947 the plaintiff had realised more income during the year 1947/1948 during the period referred to by him than his predecessor had in the corresponding period in the preceding year.

File III. p. 135.

File III. p. 189.

File III. p. 181.

File III. p. 179.

7. The last grievance of the plaintiff is that he had suffered a heavy loss on account of the reduced motor traffic after the introduction of the cut in the petrol ration. On this account he alleges, that he suffered a loss of Rs. 3,250 but reduces his claim to Rs. 1,000 ' as a matter of grace '. This ' graceful ' reduction from Rs. 3,250 to Rs. 1,000 itself shows the utter hollowness of the plaintiff's claim. This point has been dealt with by the Executive Engineer in the last paragraph of his report No. G-59(C.B.) dated the 15th March 1948, in which it is pointed out that at the time of the auction sale in January 1947 the petrol ration was much less and it was then increased all round and then reduced. The contractor must be deemed to have based his bid amount having taken into consideration the traffic expectations in the circumstances then prevailing. Moreover, no guarantee of traffic was given to him when the ferry was auctioned to him and if he raised his bid at an unnecessarily high figure he did so at his own peril. He is not, therefore, entitled to claim any remission on account of the reduction in traffic due to petrol ration, for which Government is in no way responsible.

File III. p. 215.

8. It is clear from the whole tenor of the plaint that the plaintiff having given a reckless bid of a high figure in order to oust the rival contractors, now

finds it difficult to meet his commitments and therefore from the very beginning he made attempts to avoid his liability by raising imaginary grievances such as the defective *jungal* and the like. In paragraph 8 of the plaint he has claimed Rs. 5,000 as his loss in consequence of the defective second *jungal*. He has not given any details of how he works out this particular figure which seems to be purely imaginary. The amount should not be admitted and the plaintiff should be put to strict proof of it. Similarly, his claim of Rs. 1,000 on account of losses suffered by him in consequence of the reduction in the petrol supply should also be denied. Ferry dues are recoverable under the Bombay Ferries Act as arrears of land revenue and, therefore, the action of the Public Works Department in requesting the Collector to recover Government's dues from the plaintiff as arrears of land-revenue was legal and justified and the plaintiff cannot make any grievance of it.

The plaintiff is not, therefore, entitled to any relief and it should be urged that the suit fails and must be dismissed with costs.

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16-5-56

Submitted with pbs. (S. Kamara 1/50)
The issues framed in Kamara
C.S. No. 166 of 1948 are at overleaf

16-6
A.S.

9/6

File in S. Kamara
1/50

12/6

77/25

Received on- 29-11-48
Registered on- 30-11-48
Decided on- 25-8-50
Duration- 1-8-26

In the Court of the Civil Judge, Senior Division, Karwar.

At Karwar. Exhibit No. 80

Civil Suit No.166 of 1948.

Pleaders.
Shri. Prabhu and Kasbekar.

Krishna Ramnath Bhat, 35, Goud Saraswat Brahmin, agriculturist and contractor now residing in Venktapur, Bhatkal Petha, District North-Kanara. Plaintiff.

against

The Province of Bombay. Defendant.

Claim- Rs.539-5-0.

Plaintiff's case is as follows:

There is a ferry between Manaki and Divgi in Kumta Taluka in North Kanara District, which is farmed out annually by auction sale, by Defendant through the Executive Engineer, P.W.D., North Kanara District. For the year 1947-48, the said ferry was put up for sale at Kumta on 30th January 1946 and Plaintiff's highest bid of Rs.12,001/- was accepted. Plaintiff was made to pay Rs.1401/- as advance and furnish security for the due execution of the contract. In *pursuance of the said auction sale Plaintiff passed an agreement in favour of the Defendant in March 1947. One of the important conditions of the said agreement was that Government was to supply Plaintiff at its cost two workable and convenient Jungals with five boats, two platforms and eight foot boards all in good condition and to keep them in repair. One of the two Jungals supplied one was not in good condition and not fit for the purpose. The boats supplied were leaking and even the platform on them was out of order; it had to be used with utmost difficulty and completely went out of order about the second week of May 1947. Plaintiff thereupon orally complained to the local

*o.p.2.

officers; when he found that they ignored his requests, he applied to the Executive Engineer, Kanara Division, and even sent a wire to the Superintending Engineer, Belgaum on 7th June 1947 to redress his grievance. Plaintiff suffered loss on this account; ultimately it was replaced by a bulky and inconvenient platform on 16th June 1947. Plaintiff tried to work the second bulky Jungal for about two months and it could not be conveniently used as its platform also cracked. So Plaintiff had to work with only one Jungal and was deprived of the use of the second Jungal in contravention of the accord. This grievance remaining unredressed for a long time, he even asked the Executive Engineer, Kanara Division, to terminate the contract and settle his accounts making reasonable allowances for the losses, The then Superintending Engineer, S.C., Belgaum, Mr.S.P.Little, called Plaintiff for an interview which took place on 21st August 1947 and it was settled then that Plaintiff should be compensated for the loss sustained and there was a clear promise by Mr.Little acting on behalf of Government that no interest was to be charged on the instalments due from the Plaintiff. Thereafter, Mr.Little gave a second interview to Plaintiff on 25th November 1947 when he agreed to give a remission in the bid amount. On Plaintiff's further reminding him of cut in Petrol rations imposed and consequent fall in the vehicular traffic and his collections, he asked Plaintiff to apply for remission which Plaintiff did on 10th December 1947. After interview on 21st August 1947, Plaintiff was given a second Jungal after repairing the same and the Plaintiff plied it till the end of *January 1948 and thereafter only one Jungal was at Plaintiff's o.p.3 disposal till 31st March 1948. In the meantime Government suddenly and unexpectedly started a cut in supply of petrol on 10th November 1947 which remained till 17th December 1947 and again from 1st February 1948 to 31st March 1948 i.e. till end of the Plaintiff's contract period. Owing to this Plaintiff suffered heavy losses. Plaintiff again appealed to the P.W.D and the Superintending Engineer, S.C., Belgaum, for remission and losses on account of the default of Government. Plaintiff learns that the said Mr.Little kept in his office notes and recommendations compensating Plaintiff and remitting

77/25

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*o.n.2.

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whole interest due from Plaintiff on the arrears of his instalments due to Government from Plaintiff. The said Mr.Little having retired his successor ignored all his promises and instructions, and has started proceedings against Plaintiff and his sureties for recovery of arrears of instalments due from Plaintiff, with interest at 12½ per cent per annum. This action on the part of Defendant is quite illegal and contrary to the terms of settlement arrived at between Plaintiff and the P.W.D. As the period during which Plaintiff was deprived of the use of the second Jungal according to the terms of the agreement were periods of brisk and heavy traffic and as many of the busses and vehicles that would have crossed the ferry either took another route or did not cross the ferry at all, Plaintiff lost more than Rs.5000/-. During the said period many goods trucks which, in the oridnary course would have crossed this ferry, were diverted to Uppin Pattan and vehicles bound for Sirsi from Kumta and <u>vice versa</u> were taken through Mirjan-Katgal Road. Plaintiff suffered loss of Rs.3250/- on account of reduction of petrol from 10th November 1947 to 17th December 1947 and again from 1st February 1948 to 31st March 1948, which contingency was not contemplated at the time of the agreement. Plaintiff has reduced this claim to Rs.1000/-. Government is liable to pay Plaintiff Rs.5000/- on account of non-supply of the second Jungal as per terms of the agreement. Plaintiff has to pay Government *Rs.12001 being the bid amount out of which Plaintiff has so far paid Rs.5134-5-0 plus Rs.1401/- paid by Plaintiff to Government in all Rs.6535-5-0. As Plaintiff is entitled to set off his claim of Rs.6000/- as detailed above, against the said dues of Government, Plaintiff is still entitled to recover from Government Rs.534-5-0. Government is trying to recover Rs.8117-7-0 from Plaintiff and his sureties. Besides the above mentioned amount of Rs.8117-7-0 contains interest charged at an exorbitant rate of Rs.12½ per cent per annum which the Plaintiff is not bound to pay for reasons stated

*o.p.4.

above. Even if true accounts are taken, after deducting the losses suffered by Plaintiff, nothing will be found due from Plaintiff to Government; Plaintiff per contra will be found entitled to Rs.534-5-0 claimed above. Plaintiff has failed to get any redress from Government, despite notice Section 80 of Civil Procedure Code against Government which was served Collector on 25th September 1948. He also sent copies of notices to the C- Chief Secretary to the Government of Bombay and Superintending Engineer, P.W.D., S.C.,Belgaum which they received on 27th September 1948. None of them has either replied to the notice or redressed the grievances of Plaintiff. Plaintiff is therefore obliged to file this suit. Plaintiff prays for a decree in his favour (i) declaring that Plaintiff is not liable to pay anything to the Defendant- Government on account of the ferry contract for the year 1947-48 and that the Defendant-Government is not entitled to recover any amount from Plaintiff and his sureties on that account, (ii) a permanent injunct- ion against Defendant not to recover any amount on account of the a- alleged dues of the said ferry contract from the Plaintiff and his sureties, (iii) Awarding Rs.534-5-0 with future interest at 6 per cent per annum from Defendant as detailed above and (iv) costs of the suit and such other reliefs as Plaintiff will be entitled to.

2. Defendant by his written statement. exhibit no.20, contends as follows:- Paragraphs 1 of the plaint is admitted. With regard to para 2 of the plaint it is submitted that there was no legally enforceable agreement between Plaintiff and *this Defendant. The *o.p.6. Agreement dated 2nd March 1947 was between Plaintiff and the Executive Engineer in his official capacity; that agreement is in contravention of the provisions of Section 175 Sub-section (3) of the Government of India Act, 1935 and is, therefore, invalid in law and inadmissible in evidence; there was no condition that Government should supply the Plaintiff with two workable and convenient Jungals with five boats, two platforms and eight foot-boards as alleged in para 2 of the plaint. Government did supply the Plaintiff with all the equipment which was at the ferry in the preceding year and this comprised five Jungals boats, two platforms and six foot-boards, which was sufficient to maintain two Jungals in order; it was not incumbent on Government

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to supply him with equipment necessary to maintain two Jungals. The allegations that one of the two Jungals supplied by Government was not in good condition and not fit for the purpose of the ferry is untrue. It is also not true that the P.W.D. officers did not heed to ~~Plaintiff's~~ Plaintiff's complaints to repair the second Jungal or redress Plaintiff's grievance. Defendant submits that it was due to Plaintiff's remissness that the second Jungal went out of order on the 20th May 1947; that Defendant had given every facility to Plaintiff to maintain the two Jungals in working order. The allegation that the Plaintiff suffered great loss on this account is denied; on 10th June 1947 a new Jungal was given to him in place of the one which had gone out of order on account of Plaintiff's fault. It is denied that this second Jungal was bulky or inconvenient or that it could not be used for the purpose of transporting heavy vehicles. It is submitted that the second Jungal was working satisfactorily and was suitable for transporting heavy trucks and motor buses across the ferry without any risk or danger; the allegations in para 4 of the plaint are denied. There was no question of terminating the Plaintiff's contrct nor was there any question of compensating him for the loss alleged to have been suffered by him. The allegation that the Superintending Engineer Mr.Little had promised Plaintiff on behalf of Government that no interest would be charged on the instalments due from the Plaintiff and that he would be given a remission in the bid amount are all denied. The said Mr.Little had not given any such promises or assurance to Plaintiff; assuming without admitting he did so, Defendant is not bound by whatever promises or assurances the said Mr.Little may have given; with regard to the allegations in para 5 of the plaint it is submitted that no guarantee for the traffic was given to the Plaintiff when the ferry was farmed out to him and this Defendant is not responsible if Plaintiff did not get the expected traffic realisations

c.p.6.

Defendant was not responsible for the cut in the petrol ration; in any event it is denied that Plaintiff suffered any loss on account of the cut in the petrol ration; that Plaintiff having made default in payment due from him the P.W.D. officers were justified in starting recovery proceedings against him. His contention to the contrary in para 7 of the plaint is not true and is hereby denied: it is not true that Plaintiff suffered loss of Rs.5000/- because he was deprived the use of the second Jungal as alleged; it is not true that he suffered a loss of Rs.3250/- on account of reduction in petrol Plaintiff is not entitled to claim Rs.539-5-0 or any amount from Government. On the contrary Plaintiff and his sureties are liable to pay Defendant Rs.5800-15-0 as principal with interest on that amount as balance due out of the bid amount of Rs.12,001/- which amount Government is entitled to recover as arrears of land Revenue; Plaintiff cannot claim set off and avoid paying full Court fees.

3. On these pleadings the following issues were set forth for trial by me at exhibit no.27:-

1. Whether the agreement in suit is valid and binding on the Defendant in view of Section 175(3) of the Government of India Act ?
2. What were the terms of the contract ?
3. Does Plaintiff prove that Defendant committed breach of any and which terms of the contract ? *o.p.7.
4. Whether Plaintiff proves that he suffered any and to what damages due to such breach of terms ?
5. Whether Plaintiff proves that he is not liable to pay interest on the balance due to Government ?
6. What is the amount due to Government ?
7. What is due to Plaintiff after deducting the sum due to Government ?
8. Is Plaintiff entitled to injunction sought ?
9. What order and decree ?

4. My findings are:-

1. As valid.
2. As stated by Defendant.
3. No.
4. In the negative.
5. " " "
6. As under.

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7. Does not survive

8. " " "

9. As under.

5. In the year 1947-48 the ferry between Divgi and Manaki in Kumta Taluka of the Karwar District which is usually farmed out annually by auction sale, was purchased by Plaintiff from Government through the Executive Engineer for a sum of Rs.12001/- which ~~which~~ appears to have been much in excess of the earlier bids by about Rs. 5000/-. Plaintiff had to pay Rs. 1401/- as advance and furnish security for the due execution of the contract. Government is now seeking to recover from Plaintiff and his sureties arrears and interest due thereon at 12½ per cent per annum. Plaintiff's present action has been launched on the ground that Plaintiff has suffered damages by Defendant's breach of the terms of the contract to the tune of about Rs.6 thousand;- 5 thousand being on account of Government's failure to supply Plaintiff with a second Jungal throughout the 12 months of his contract and Rs. 1000/- being the less suffered by Plaintiff owing to petrol restrictions during the year of his contract. Giving a set off for the amount of damages sustained by him, Plaintiff states he is entitled to a sum of Rs. 534-5-0 which may be awarded to him.

O.P.8.

6. This has been resisted by Defendant on several grounds. The first contention of Defendant is that the agreement on which the suit is based is defective and therefore the present action does not lie. It is contended that under section 175(3) of the Government of India Act, the agreement in suit was not properly entered into and therefore the present suit is not tenable. Now section 175(3) of the Government of India Act, 1935, provides as under - Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the Executive Authority of the Federation or of a Province shall be expressed to be made by the

Governor General or by the Governor of the Province as the case may be and all such contracts and all assurances of property made in exercise of this authority shall be executed on behalf of the Governor General or Governor by such persons and in such manner as he may direct or authorise. Shri.Kasbekar, pleader for Plaintiff submits that if this contention of Plaintiff finds favour with the Court, he has no grievance; nay he would welcome it for as a result Government would be prevented from recovering arrears of the Bid and interest from Plaintiff and his sureties and he therefore submits he has nothing to urge so far as this certification is concerned. On the other side the Government pleader submits that the contention that has been preferred by the Office of the Remembrancer for Legal Affairs appears to have proceeded under some misapprehension which cannot be located and hazards it may be due to the submission of an ancient and outmoded agreement to the Remembrancer of Legal Affairs. The agreement in suit has actually been entered into with Plaintiff by the Governor of the Province as required as can be seen from the agreement itself, produced at Exhibit 61. Though Defendant's pleader has not conceded the point, he submits he is not keen on it. I find on a perusal of the agreement that the agreement satisfies the conditions laid down by section 175(3) of the Government of India Act, 1935. The agreement *is therefore valid and binding. Hence the above finding. *O.P.no.9

7. That brings me to the 2nd and important issue relating to the terms of the contract. The record reveals that prior to the actual agreement entered into by Plaintiff with Governement there were certain preliminaries. These throw a flood of light on Plaintiff's action. At exhibit no. 61, page 1, we have got the Jahirnama in respect of 5 ferries including Divgi-Mirjan(Hegde) ferry, Divgi(Manaki) ferry, Venkapur ferry, Ulware ferry and Shastwati ferry- which appears to have been auctioned out simultenuously. The Government appears to have taken a lot of precautions. Clause 13 of the Jahirnama provides as follows: "Volume of traffic on any particular route cannot be assured. If for any reason any traffic is closed or a closed road is opened or if the ferry farmer

suffers any loss for any reasoning according to his expectations he will not be entitled to any remission or refund. "Pages 1 to 19 of exhibit no. 61 deal several other with conditions relating to these different ferries. According to the Overseer who has deposed at exhibit no.75, these condions were read out to the prospective bidders prior to the bid and their signatures obtained. Plaintiff in his deposition (Ex.70 has not been consistent; at first he states that he with othe had signed these several conditions read out to them; clause 13 was acceptable to him. He admits that other conditions also were read out to prospective bidders and admits his signature on pages 3 and 5 of exhibit no.61. A little later he recants and states that conditions at page 5 were not read out to him and contends that up to page 19 he signed without the differe document being read out to him since bidders stated that they were conversant, with the conditions relating to these ferrie His next statement that for 8 to 10 years he has been associated with ferry contracts, would go to show that he was in the know of things and cannot now feign ignorance about Government's liability being restricted to the supply of only 1 Jungal.

O.P.no.10. At page 5 the note unequivocal provides as * follows: " One Jungal as a minimum with the required numbered of boats and platforms for the same will be supplied by Government and these shall be maintained in good order by the ferry-farmer. If possible a second Jungal with accessories will be supplied by Government. If the ferry farmer uses additional Jungal wit Jungal boats other than the ons supplied by Government the same shall have to be got passed by the Executive Engineer or his sub-ordinate and no rent shall be paid therefor. Galgalli the Jungal boats supplied by Govennment will be done departmentally. On this note Defendant predominantly relied to establish Government's liability to supply only 1 Jungal. At page 11, there is further undertaking by the contractors that they shall not claim any compensation, if the Mirjan Katgal Road or any other Road, is thrown open for traffic from 1st April 1947 or any time during the tendure of their lease.

Page 11, contains instructions to the ferry farmers regarding repairs and replacements which they have to do. Clause 1 provides that minor repairs must be carried out by the Contractors, which have been specified at Clauses A, B, as —"Coal tarring the platform including the railing and landing boards.....restiching and tightening the Jungal boards whenever necessary... minor repairs to the Jungal boats such as plugging holes and to the platform and landing boards such as fixing nails, tightening iron straps and bolts, replacing any broken bolts, planks etc." It is further provided that if the ferry farmer fails to do this, the Sub-Divisional Officer will give him 7 days notice in writing detailing the repairs to be carried out and if he fails to do so, the same will be got done by the Department and the costs of such repairs plus 50 per cent as penalty will be recovered from the ferry contractor and no appeals in this connection will be entertained. At page 15 is a statement showing the number of boats to be maintained and the maximum number of passengers each boat can carry, the minimum number of boat-men required to be maintained by the ferry farmer at his costs, and it is on this statement that Plaintiff mainly depends for his present contention that two Jungals were agreed to be supplied to him. In connection with the Divgi ferry, in the 'remarks' column the statement recites that two Jungals are to be run daily on this *ferry and impliedly it is argued two Jungals were to be supplied. *e.p.11.
Per contra it is submitted that the remark column that two Jungals are to be run on the Divgi ferry does not mean that Government was to supply the two Jungals. This appears to me merely a statement showing the maximum number of boats and the number of passengers, boat-men etc., that the different ferry contractors had to provide and from the entries in the remarks column that two Jungals were to be run daily (whereas in the case of Venktapur ferry and Sharavati ferry it is stated that only one Jungal was to be run) it cannot be stated that Government under-took to supply Plaintiff two Jungals; contents of the note at page 8, exclude such an interpretation. My attention is also drawn to the revised form of agreement produced along with exhibit no.61, which appears at page 33. Below para 19, in the chart, Sub-clause (a) shows that the Government has supplied (illegible)

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and Sub-Clause (b) provides that the Maktesar should maintain (ખરીદનાર કાયમ રાખશે). From a reference to this also it is contended it would go to show that there was no liability thrown on Government to supply the ferry farmer of Divgi with two Jungals. I have stated already that the gravemen of the charge levelled by the Plaintiff against the Government is that Government failed to supply him with a second Jungal after the one that was supplied had failed, resulting in great loss to his business. Nextly that the second Jungal that was supplied to him, in lieu of the broken Jungal, was both unwieldy and perilous, which adversely affected his business; on these two counts for a period about which incidentally Plaintiff has not been very precise which he has sought to enlarge in his deposition to about 6 mohths he has assessed damages at Rs.5000/-. On going through the Jahirnama and the other papers that were signed by prospective ferry bidders prior to the sale on 30th January 1947 it is * difficult to uphold Plaintiff's story that the Government under took to supply him with two Jungals to be plied on this ferry. The Government pleader has particularly emphasised the point that Plaintiff was n not a stranger to ferry contracts as admitted by him. There is evidence of the overseer at exhibit no.75 that all the conditions were read out to the prospective bidders before the ferries were put to sale. There is, no reason why he should be disbelieved on the point. Having accepted the terms of the contract that Government would supply Plaintiff with only one Jungal, Plaintiff cannot now make a moan about Government's failure to supply him with a second Jungal or the unsuitability of the second Jungal that had been supplied to him nor can Plaintiff contend that having knocked down this ferry in a bid of Rs.12,001/-, Rs.5000/- over the usual amount he was entitled to preferential treatment at the hands of the Government as submitted by his pleader. It was for the bidder to assess the returns that he was likely to get from this highly speculative bid

*e.p.12.

that he had tendered and if he has suffered, he cannot now try to get refund or remission from Government. I may mention at this stage that Defendant's contention from the outset has been that Plaintiff begrudged the large amount he had tendered for this ferry soon afterwards and was trying by all possible means to make out a case either for remission or for refund. This is apparent from the correspondence between the Overseer and the Executive Engineer. Hence my finding as given on issue no.2.

8. As regards the next issue about the alleged breaches committed by Defendant, as already shown in my discussion about the contention of the Defendant is that there was no occasion for any breach of the contract by Government. Assuming for a moment that it was Government's liability to supply Plaintiff with two Jungals Defendant contends it was Plaintiff's default that was responsible for the failure of the Jungal; There was contributory negligence on Plaintiff's part; Plaintiff had not acted in a responsible manner with regard to the Jungal; he failed to unload trucks before they were transported; though a warning was issued to him in this connection as can be seen from the Overseer's note in the *book of complaints produced at exhibit no.60, Plaintiff *o.p.13. failed to do the Galgaling operations which was his primary responsibility which consisted of scraping the oyster-shells etc adhering to the boat, oiling, plugging the holes. It is submitted on behalf of Government that as far back as 30th May 1947, Plaintiff had been instructed to Galgal boat nos.49, 50 and 15; that Plaintiff however failed to do these operations presumably because April and May are the peak-months of business. It is on record that Galgaling requires about 7 days for one boat that if this Galgaling had been done timely the boats would not have shipped water leading to failure of Jungal from 28th May 1947 which date appears correct though Defendant in his written statement has given the date as 20th May 1947. After two months making this failure a pretext, Plaintiff started a series of applications complaining about the Jungal that failed; Whereas Defendant admits that there was only one Jungal plying from 28th May 1947 till 16th June 1947 and again in the months of February and March of 1948, Plaintiff has not been consistent and has stated that from

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August till October 1947 there was only one Jungal though this period was not adverted to by him either in his notice or in his plaint. About the Galgaling operation, it is contended by Plaintiff's pleader that this operation under the terms of agreement, if Plaintiff failed to do, it was for the Government to do the same and recover expenses and 50 per cent penalty from the ferry farmer. No blame can be laid at the door of the Plaintiff for failure to carry out this operation. Government pleader, contrariwise, submits that if Plaintiff put off operations by about a week as testified to by the Overseer, Government could not attend to the Galgaling and it cannot now be argued that this responsibility was not discharged by Government; it was the ferry farmer's primary responsibility to carry out these minor operations and he must suffer for any consequences arising from his own negligence. It is submitted also that

w.p.14.

*these small leakages as a result of which the boat was shipping water had been discovered by Plaintiff himself on 8th May 1947 and though he was called upon to do the Galgaling immediately under a note of Sub-Divisional Officer, Kumta, dated 30th May 1947 in exhibit no.60, he refrained from doing any such operations till much later. The second shaft levelled by the Plaintiff is that the second Jungal that was supplied to him on 16th June 1947 was unwieldy and difficult to negotiate. This appears to have been the subject-matter of several complaints and petitions by the Plaintiff to the Superintending Engineer at Belgaum, as a result of which there was enormous correspondence between the Superintending Engineer to the Executive Engineer and to his Sub-ordinates at Kumta. The evidence in this connection shows that though a platform of a different type was supplied it was quite safe a friendly caveat issued by the Sub-Divisional Officer referred to below calling upon Plaintiff to be cautious while loading trucks on this new Jungal Plaintiff has subsequently tried to subsequently capitalise; tests on the spot carried out on more than one occasion, revealed that this Jungal was

capable of easy-manipulation and safe and on 16th June 1947, there is a note in the visitor's note-book that a newly repaired Jungal, has been granted to ferry farmer and a long-wheeled 174" base bus No.BYX.1869 with a loaded weight of 2 tons in it and an additional weight of 1½ tons on the platform was loaded over the Jungal to test its strength; and 174" wheeled bus of U.K.T No.1545 was also tried and the Deputy Engineer reported that the Jungal was quite safe and working satisfactorily. The note, however, ended tating "that the Jungal boats being of different types the ferry farmer was to be careful in the loading." On 18th June 1947 this new Jungal appears to have been subjected to a further test of carrying a truck with bags of Ragi etc. on the platform and was again reported to work satisfactorily. On the same day there is a note of the P.S.I. to the effect that the Jungal is likely to snap because of boats and he has observed that it would be better if the old Jungal itself was repaired and replaced early. On 22nd June 1947 Mr.Raj reported that both * the *o.p.18 Jungals were found plying satisfactorily. Similarly on 1st July 1947, 2nd July 1947, 5th July 1947 and 24th July 1947. On 27th July 1947, there is a note about the ferry farmer failing in his duties to unload the merchandise completely with the result that the concentrated load falls in the centre and end beams of both the halves of the Jungal and as the central beam between the boats is unsupported, it is likely that the beams may give way and cause trobble. The ferry farmer was warned to unload the trucks. In this connection Shri. Mavinkurve, Government pleader submits that beyond one report of a P.S.I. stating that it would be desirable to repair the old Jungal and replace it, there is nothing whatsoever to support Plaintiff's contention that this second Jungal was unwieldy and as a result Plaintiff's business suffered. Exhibit no.68, is a correspondence file between Plaintiff and the Executive Engineer and the Superintending Engineer in this connection. At page 9 is a wire sent to Plaintiff from the Executive Engineer asking him to meet him at Kumta on the 9th of July with the idea of inspecting the Jungals at Divgi. At page 10, there is a chart showing the trips made by these two Jungals for a week. On 2nd July 1947 New Jungal appears to have carried 11 vehicles, old Jungal, 14. On 3rd July 1947,

repaired Jungal- 10; good one-11. On 4th July 1947, 7 as against 15, on 5th July 1950, 11 as against 12. On 6th July 1947, 7 as against 13. On 7th July 1947, 8 as against 12. ~~On 6th July 1947, 7 as against 13. On 7th July 1947, 8 as against 12.~~ On 8th, 9 as against 15. On 9th, 10 as against 15. At page 11, is a letter from Plaintiff to the Superintending Engineer, Belgaum, about the Executive Engineer's personal inspection of the Jungals and the damage that was noticed to the platform of the new Jungal and the promise to effect immediate repairs and his insistence that the new Jungal was not at all workable without risk or danger. The Executive Engineer stated that the Department would be responsible for any accident. At page 13, dated 18th July 1947 Plaintiff again stated he was not prepared to accept the view of the executive Engineer that this Jungal was

*o.p.16. *quite suitable for operation on this ferry. At pages 14 and 15 are two wires one from the Superintending Engineer to Executive Engineer, II from Deputy Engineer to Executive Engineer in the matter of repairs to the II Jungal and on 22nd August 1948, the Deputy Engineer wired back that the Jungal had been completely repaired and was running smoothly. At page 16, is the correspondence from the Superintending Engineer to the Executive Engineer containing the nature of the complaint made to the Superintending Engineer by Plaintiff. It is submitted by Plaintiff's pleader- Shri. Kashekar that the Superintending Engineer Mr.Little contrary to his sirname, was large at heart took a sympathetic view of the case and was of the opinion that some compensation should be awarded to Plaintiff for the loss he sustained. Another letter from the Superintending Engineer to the Executive Engineer dated 6th December, 1947, has also been commented at length. In this letter, the representations made by the Plaintiff on the one hand with the remarks of the Executive Engineer were forwarded to the Superintending Engineer. It appears from this letter that Superintending Engineer was inclined to be rather liberal in the matter of enforcing payment of instalments and opined that a sum of Rs.1500/-be

recommended as compensation. Reference was made herein to the Sub-Divisional Officer's warning to ply the second Jungal carefully. It is Plaintiff's case. Mr. Little actually proposed that remission of Rs.4000/- be given to Plaintiff by way of compensation, which communication by a notice exhibit no.33, Defendant was called upon to produce. The P.W.D. Department, replied that there was no such communication. This communication from Superintending Engineer has been flourished by Plaintiff's pleader as testifying to the genuineness of his clients grievances, which found a sympathetic echo in the latter. The Government pleader has countered this argument evell that the Superintending Engineer's remarks and recommendatéo ions were of an exploratory character and were inchoate state; his recommendations *ensued from the talks between him on the one hand and the Plaintiff on the other; that the Superintending Engineer himself did not make any local inspection nor made any final recommendation for remission or refund to Plaintiff. He seems to have been actuated by inconvenience to the public; The correspondence having been not finalised , cannot be urged by Plaintiff in his favour. Mr. Little's successor after going through the correspondence made a final report calling upon Plaintiff to pay the amount owing from him under exhibit no.66, dated 4th May 1948. Prior to that under exhibit no.64, dated 11th April 1948 Plaintiff had been told that no remission would be allowable to him. Shri. Mavinkurve in addition submits that looking to the statement of daily collection for the months of April to July 1947, it would appear that in the fair season when business was at its highest, the amount realised by Plaintiff in April was about 1345/-, and in monsoon months must necessarily been dropped because this ferry is mainly used by goods-trucks on which restrictions are imposed during the monsoon. o.c. 17

9. At this stage I shall hurriedly scan the oral evidence that has been adduced in the case which I may add recides into the background because of the overwhelming documentary evidence. Plaintiff has deposed at exhibit no.70 and two witnesses on his behalf at exhibits no.72 and 72. As stated above Plaintiff's case has been subjected to some embellishment in the mat'er of the period during which only one launch was available. The second witness is a truck owner and states

he was a Municipal President of Kumta during this period. He however, contradicts Plaintiff and states thatright from April of 1947 for a period of two months there was only one Jungal plying which entailed a wait of 6 to 8 hours and enforced 'Joint system' amongst bus and truck owners ie. there were connecting vehicles beyond the ferry and only goods and passengers were transported, thus depriving the ferry farmer of charges he would have got *for ferrying vehicles. From this witness it has been gleaned that the Divgi ferry is less than a furlong wide and takes less than half an hour to cross. He states that he has accounts which he has not been called upon to produce. It is submitted on behalf of the Plaintiff that Logbooks which truck owners have to maintain would have been the best evidence to ascertain to what extent Plaintiff's business had suffered both as a result of the inefficient working of the new boats and also because of petrol restrictions. This witness predicates that from 1943 onwards he has noticed the bigger Jungal unserviceable at times of Low-tide. He admits no representation was made though extreme inconvenience was experienced; also that he himself did not divert his traffic to the Uppin Pattan Kumta route. That next witness, exhibit no.72, states that he came to Sirsi in 1932; as Sub-editor of Navachetan of Sirsi from 6th January 1948 till 30th March 1948 he had to visit Kumta crossing this ferry regularly. Prior to that his coconut ~~account~~ business entailed crossing of this ferry frequently. He supports Plaintiff and states that as a result of one Jungal plying buses had to wait for 4 to 6 hours and some buses resorted to joint system. He had tendered in evidence an article submitted by him to this paper in the pen-name of K.N.Rao, produced at exhibit no.74 dated 31st March 1948. Questioned about this publication, he states that the incident that took place on 31st March 1948 was of his observation; till 3rd

*o.p.18

June 1948 he did not find its publication necessary. On behalf Defendant's behalf it is submitted that if this nuisance of interminable delay was a matter of frequent occurrence this would have been agitated in the paper and brought to the notice of the authorities; it was a just and proper matter wherein the publicawere entitled to ventilate their grievances. This publication on 6th April 1948 in the shape of a letter to the Editor by the Sub-Editor himself in his pen-name brings the whole thing under a cloud of suspicion. There was nothing to deter the Editor from commenting on this ferry in the editorial columns. It has not been satisfactorily proved that this K.N.Rao is no other than witness, exhibit no.72. Consequently the suggestion thrown out by Defendant that the whole thing was manoeuvred by Plaintiff in order to strengthen his hands later on gains ground. In my opinion, the suggestion thrown by Defendant has allot of force *behind it; witness's testimony has not impressed me favourably. On the other side two witnesses have been examined at exhibits nos.75 and 78, the first being the Overseer and the second the Deputy Engineer in charge of this Division from 27th July 1947 onwards. It is suggested in cross of exhibit no.75, that he has some prejudice against Plaintiff and was inclined to harass him for certain private reasons. This suggestion, however is difficult to accept since in no correspondence of Plaintiff to the Department of which there was a spate was an accusing finger pointed at this witness. It is difficult to believe that this witness who belongs to Belgaum could have borne Plaintiff any grudge. The responsibility tried to be thrust on him is far in excess and out of keeping with his Subordinate position. Plaintiff's pleader has complimented exhibit no.78, for his truthfulness and honesty. He has admitted that permanent coolies are now retained for immediate attention of boats and other equipment. The oral evidence, however takes a minor place in view of the overhelming documentary evidence we have. There is no reason why this documentary evidence should be disbelieved. On 15th July 1947, is a letter from the Executive Engineer to the Plaintiff, copy of which is forwarded to the Superintending Engineer stating that his complaint about the

*o.p.19.

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second Jungal that was supplied to him was baseless. On 13th October 1947 under exhibit no.69 Superintending Engineer wrote to Government informing the Government that Plaintiff's representation was still under consideration On pages 25 and 26 of exhibit no.69, are two letters to the Executive Engineer from the Deputy Engineer dealing at length with the grievance of the ferry farmer. Therein he states at para 2 that the matter of compensation is a matter for the Executive Engineer to recommend but that the ferry man not having ceased work at any time the question of compensation did not arise. At para 4 He mentioned that Plaintiff's complaint that Mirjan-Katgal route was being used by the double joint buses in view of *the ban is difficult to credit. The other letter exhibit no.26 deals with the matter of reduction in volume of traffic owing to petrol restrictions to which I shall refer presently. At page 29, is a letter dated 15th March 1948 from the Executive Engineer to the Superintending Engineer wherein he writes that proper Jungals had been provided and the ferry farmer's representations had been made only with the idea of gaining remission. He states that the responsibility of Government was only to supply one Jungal and contractor has no case for remission on the ground that a 2nd Jungal had not been supplied. He however, left the matter of compensation up to Rs.500/- for his consideration. In the light of this correspondence it is difficult to credit Plaintiff's allegation that there was an order recommending compensation to the tune of Rs.4000/. I shall passingly refer to the sympathetic attitude taken by Mr.Little which has been stressed by Plaintiff's pleader as showing the genuineness of his clients grievanc Shri. Mavinkurve, submits that because the convenience of the public was involved it is not unlikely that Mr.Little may have been anxious to see that two Jungals were supplie to the ferry farmer, though the supply of the second Jungal was not imperative under the terms. That explanat-

*o.p.20

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appears to be quite reasonable and convincing and does not strengthen Plaintiff's action. Hence my findings on issue no.6 as given above.

10. I now take up issue no.4. In this connection Plaintiff states that though there is no direct evidence about the damage that he has sustained, this can be conveniently and easily gathered from the Kird book maintained by Plaintiff which he had to maintain under the terms of agreement. The Kird book had been produced at exhibit no.62. From this Kird book a statement had been produced by Plaintiff's pleader at exhibit no.79A, which shows the highest income recovered was in January 1948 which was Rs.1638-5-1. Taking this as a norm, it has been shown that the loss sustained by the ferry farmer was over Rs.3378-0-0 during his tenure. On the other side Shri. Mavinkurve contends that this Kird, exhibit no.62 is not reliable; that the different endorsements in the visitor's book at exhibit no.60, by the authorities would go to show that it had been maintained by *the Plaintiff irregularly; that right up to the close of May 1947 it had not been written. On 11th July 1947, it appears to have been submitted for inspection. There are endorsements of 28th and 29th of June that it was not written; the last endorsement made on it is on 3rd September 1947. Under the terms of the agreement the Kirds were to be surrendered by Plaintiff as per Clause 13. Plaintiff has admitted that he has been negligent in its maintenance, and also admits that it was not written from time to time and it is not the original record of his business. It is submitted that the log-books of the three passenger buses, U.K.T., Katgal and Chitrapur services, using this route would have conclusively shown Plaintiff's loss of business. Plaintiff himself has not been very definite about the loss which he has assessed at varying amounts at Rs.12,20 and 30 per day; that Plaintiff has not even cared to produce the receipt books which he states he had. Under the circumstances, it is submitted that this statement that Plaintiff has produced cannot be made a basis of calculation; that the income during summer cannot be taken as a standard because the dry months of the year are

*o.p.21.

usually the rush months for trucks; volume of traffic was never assured. The terms of agreement at exhibit no.61 pages 1-19 militate against the damages sought. The statement at page 10 of exhibit no.69, would show that both the new Jungal and the old made several trips on this ferry and the difference was not such as to pronounce the II Jungal inefficient under clause 15 of the agreement. Only three contingencies were envisaged under which a ferry farmer was entitled for compensation. This did not provide for compensation on the score of petrol restrictions etc., so far as petrol restrictions are concerned, these were present when Plaintiff's contract started which were subsequently called off and again reimposed during the month of November 1947; petrol cut was not one of the conditions provided for under clause 15 under which Plaintiff could seek compensat-
*e.p.22. ion; that the Plaintiff's claim of Rs.1000/- *on this account is not proved nor tenable. In my opinion, Plaintiff has firstly failed to prove that under the terms of the agreement he was entitled to claim remission because of petrol restrict-ions that came to be imposed. Indubitably there must have been some reduction in the volume of traffic but the Court has not been supplied with dependable data in assessing this reduction. Better evidence was available to Plaintiff in this matter in the shapre of the log-books etc. That is not forth-coming. There is no satisfactory evidence that petrol restrictions were in force in February and March of 1948 as alleged by Plaintiff. In my opinion, Plaintiff has failed to prove the breach of terms by Defendant and his claim to damages.

11. As regards the matter of interest it is submitted that if the amount of arrears due to Government itself is disallowed then the matter of interest does not arise. On the other hand Shri. Mavinkurve submits that under the agreement, interest was agreed at the rate of 12½ per cent per annum. The amount payable by Plaintiff is still outstanding. There is no reason why the amount owing should not be

charged with interest agreed and from the amount so found due Plaintiff if at all should be awarded compensation as prayed by him. Looking at it from different angles, in my opinion, Plaintiff would be liable to pay interest on the balance due to Government.

12. Amount due to Government as regards issue no.6, is the amount stated by the Plaintiff in his plaint.

13. Issue no.7 does not survive. So also the issue no.8.

O r d e r.

Plaintiff is not entitled to any injunction sought or any decree. Plaintiff is nonsuited. Plaintiff to pay Defendant his costs of the suit.

25th August 1950. Sd.S.G.J.D'Costa,
Civil Judge, Senior Division.

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Clerk of the Court.

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second Jungal that was supplied to him was baseless. On 13th October 1947 under exhibit no.69 Superintending Engineer wrote to Government informing the Government that Plaintiff's representation was still under consideration . On pages 25 and 26 of exhibit no.69, are two letters to the Executive Engineer from the Deputy Engineer dealing at length with the grievance of the ferry farmer. Therein he states at para 2 that the matter of compensation is a matter for the Executive Engineer to recommend but that the ferry man not having ceased work at any time the question of compensation did not arise. At para 4 He mentioned that Plaintiff's complaint that Mirjan-Katgal route was being used by the double joint buses in view of *the ban is difficult to credit. The other letter exhibit no.26 deals with the matter of reduction in volume of traffic owing to petrol restrictions to which I shall refer presently. At page 29, is a letter dated 15th March 1948 from the Executive Engineer to the Superintending Engineer wherein he writes that proper Jungals had been provided and the ferry farmer's representations had been made only with the idea of gaining remission. He states that the responsibility of Government was only to supply one Jungal and contractor has no case for remission on the ground that a 2nd Jungal had not been supplied. He however, left the matter of compensation up to Rs.500/- for his consideration. In the light of this correspondence it is difficult to credit Plaintiff's allegation that there was an order recommending compensation to the tune of Rs.4000/- I shall passingly refer to the sympathetic attitude taken by Mr.Little which has been stressed by Plaintiff's pleader as showing the genuineness of his clients grievanc Shri. Mavinkurve, submits that because the convenience of the public was involved it is not unlikely that Mr.Little may have been anxious to see that two Jungals were supplie to the ferry farmer, though the supply of the second Jungal was not imperative under the terms. That explanat-

*c.p.20

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*o.p.21.

Suits.
Kanara.

For a declaration that Government is not entitled to recover from the plaintiff or his sureties any amount on account of the ferry contract dues and for a permanent injunction.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 15786
Bombay Castle, 13th November 1950.

Read Government Resolution, Legal Department No.12502 dated the 7th November 1949.

Letter from the District Government Pleader, Karwar No.458 dated the 30th August 1950, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Karwar on the 25th August 1950, when the following order was passed:

In the Court of the Civil Judge, Senior Division, at Karwar. Civil Suit No.166 of 1948 Krishna Ramanath Bhat..... Plaintiff: vs. The Province of Bombay	:

"Plaintiff is not entitled to any injunction sought or any decree, plaintiff is nonsuited. Plaintiff to pay Defendant his costs of the suit."

Letter from the District Government Pleader, Karwar No.552 dated the 11th October 1950, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

original

E.P.Bhamgara,
Assitional Assistant Secretary to Government.

To
The Public Works Department,
The Superintending Engineer Southern Circle Xxxxxxx,
The Executive Engineer, Kanara, Division,
The District Government Pleader, Karwar.

KML/1.

Vide D.-G.P.'s (Karwar) letter No. 561 dt- 16-10-50. 49 97

Decree in a original regular suit (O.XX rr.6,7).

Suit filed on 29th November 1948.

Exhibit no.81.

W.570
Gpo. 1-0-0
Sc. 0-9-0
Amp. 0-4-0
Sc. 0-2-0
Postage 0-1-0
2-0-0

1/50

Decree.

In the Court of the Civil Judge, Senior Division,

Karwar.

Regular Civil Suit No.166 of 1948.

Krishna Ramanath Bhat, 35, Goud Saraswat Brahmin, agriculturist and contractor, Venktapur, Bhatkal Petha, North Kanara. — Plaintiff

Pleaders: Shri.Kasbekar & Shri. Prabhu.

Versus.

The Province of Bombay (now the State of Bombay) — Defendant.

Pleader: District Government pleader.

Claim: Rs.539-5-0 (Col.9).

Plaintiff sues for a decree in his favour:

i) declaring that Plaintiff is not liable to pay any thing to Defendant on account of the ferry contract dues of Divgi Ferry for the year 1947-48 and that Defendant is not entitled to recover any amount from Plaintiff and his sureties on that account;

ii) granting a permanent injunction against Defendant not to recover any amount on account of the alleged dues of the said ferry contract from Plaintiff and his sureties;

valuation for (i) and (ii) is Rs. .. 5-0-0

iii) awarding.. .. ..Rs.534-5-0
with future interest at 6 per cent per annum to which amount Plaintiff is entitled to as per details given in plaint para 10.

Total Rs.539-5-0

and iv) costs of the suit together with such other reliefs as Plaintiff will be entitled to.

This suit coming on this day for final disposal before Shri. S.G.J.D'Costa, B.A.LL.B. (Bom. & Mad), Civil Judge, Senior Division, Karwar in the presence of Shri. M.G.Kasbekar and Shri. P.M.Prabhu, pleaders for the Plaintiff and of Shri. B.S.Mavinkurve, District Government pleader representing the Defendant, it is ordered and decreed as under:-

Plaintiff is nonsuited. Plaintiff to pay Defendant his costs of the suit amounting to (Rs.348/1/-) Rupees three-hundred and forty-eight and anna one-only.-

Costs of suit.

Plaintiff.	Rs.a.p.	Defendant.	Rs.a.p.
1. Stamp for plaint,Exh.1.--	56-14- 0	Stamp for Exhs.nos. 8,10 to 19,21,22,28, 32,35,46,79--	11- 4- 0
2. -Do- for power,Exh.3--	0-10- 0	Pleader's fees---	252- 5-0
3. -Do- for Exhs Nos.5,26,44--	1-14-0	Subsistence for witnesses, Exh.76	90-12-0
4. Pleaders fee on Rs.8,117/- (Vide order on Exh.79)	252- 5-0	Service of process, Exh.36--	5- 0-0
5. Subsistence for witnesses exhs.40,41,42,48--	52- 4- 0		
6. Service of process,Exhs.1, 5,38,39--	14-12- 0		
Total:	378-11-0	Total:	359- 5- 0
Costs disallowed:		Costs disallowed:	
i) Stamp for exhs nos.5,26, 44-	0-10-0	i) Stamp for exh. nos.8,10 to 19,21, 22,28,32,35,46,79-	11- 4 - 0
ii) Service of process, Exh.5.-	9- 0- 0		
Total:	9-10- 0	Total:	11- 4- 0
Balance:	369- 1-0	Balance:	348- 1-0

GIVEN under my HAND and the SEAL of the COURT this 25th day of August 1950. ..

..

Sd.S.G.J.D'Costa,
20th September 1950.
Civil Judge, Senior Division.

Examined.Correct.
Sd.M.L.Nayak,
Decree Clerk.
(bears seal of the Court).

Pleader for Plaintiff: Sd.P.M.Prabhu.

Pleader for Defendant: Sd.Bhavanishankar S.M.

(Notice to parties: Pleade note that the documents produced in this suit are liable to destruction if not taken back)

Copied by
Compared by
Original
Copy

True Copy

7-10-50

Clerk of the Court.

CIVIL JUDGE'S COURT S.D. KARWAR

Application received on- 31-8-1950 (thirty-first August nineteen hundred and fifty).

(Original decree ready on 20-9-1950)

Copy ready on- 7-10-1950 (seventh October nineteen hundred and fifty).

Copy delivered on- 11-10-1950 (eleventh October nineteen hundred and fifty).

C.O.C.

Suits.
'Kanara'.

9951

For a declaration that Government not entitled to recover from the plaintiff or his sureties any amou on account of the ferry contract dues and for a permanent injunctio

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No., 1095
Bombay Castle 17th January 1951.

Read Government Resolution Legal Department No. 15786 dated the 13th November 1950.

Letter from the District Government Pleader, Karwar No. 619 dated the 16th November 1950 requesting Government's sanction to the defence of the Civil Appeal No. 225 of 1950 filed by the plaintiff in the suit noted in the margin.

In The Court of the Civil Judge Senior Division, at Karwar.
Civil Suit No. 166 of 1948.
Krishna Ramanath Bhat - Plaintiff
Vs.
The Province of Bombay - Defendant.

Resolution:- Sanction is accorded to the defence of Civil Appeal No. 225 of 1950 in the Court of the District Judge, Karwar, on the lines of the brief accompanying Government Resolution, Legal Department No. 12502 dated 7th November 1949 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Karwar dated 25th August 1950.

By order of the Governor of Bombay,

original.

(E. P. Bhamgara)
Additional Assistant Secretary to Government.

Submitted for signature.
16/1

To

Public Works Department,
The Superintending Engineer, Southern Circle,
The Executive Engineer, Kanara Division,
The District Government Pleader, Karwar.

A.A.S.

Issued on 17/1

P.H.R.
16/1

53
53

Received on 9/10/1950.
Registered on 6-11-1950
Decided on 24/10/1951.
Duration 1 year & 15 days.

Ex. 10.

In the District Court of Kanara,

At Karwar.

Appeal No. 225 of 1950 from Decree in Civil Suit No. 166 of 1948 of the Court of the Civil Judge Shri S.G.J.D'costa of Karwar.

Pleaders.

Shri Gokarn. Krishna Ramanath Bhat, ryot of Venkatapur in Bhatkal Petha. .... Appellant. (original plaintiff).

a g a i n s t

The Government Pleader. The State of Bombay .... Respondent (original Defendant).

Claim - Rs. 639-5-0.

This appeal arises out of a suit brought by the Plaintiff, a ferry contractor, against the Government of the State of Bombay, in the court of the Civil Judge, Senior Division, Karwar, for injunction and damages.

2. The material facts are briefly these. In Kumta Taluka in this District, there is a ferry between Manaki and Divgi. It was farmed out to the Plaintiff by the Executive Engineer of this District for Rs.12,001/- by auction sale for a period of 12 months from 1st April 1947 to 31st March 1948. The Plaintiff paid Rs.1401/- as advance at the time of the auction-sale and executed an agreement deed to pay the balance in certain instalments with interest at 12½ per cent per annum and furnished security for the due execution of the contract. The Plaintiff subsequently paid various sums from time to time aggregating to Rs. 5134-5-0. The balance that remained due from him was Rs.8117-7-0 As he did not pay it the Government started proceedings against him and his sureties for the recovery thereof.

* o.p. 2

3. The Plaintiff, therefore, commenced the present action against the Government. He charged Government with having committed breach of a term of the agree-

ment. He alleged that under the agreement Government was to provide him with 2 jungals, but Government provided him with only one jungal which was not sufficient to cope with the traffic. After repeated representations made by him Government supplied him with another jungal, but it was bulky and difficult to negotiate and was not in good condition. As a result many of the buses and vehicles which would have otherwise crossed the ferry took other roads or did not cross the ferry at all. Consequently he suffered loss on that account to the extent of Rs.5,000/-. Secondly, Government introduced a cut in the supply of petrol to motors from 10th November 1947 to 17th December 1947 and again from 1st February 1948 to 31st March 1948, as a result of which there was a fall in motor traffic and consequent loss to him. The Plaintiff assessed this loss at Rs.1,000/-. Setting off his total loss of Rs.6,000/- against the balance due to Government, he contended that not only nothing was due from him to Government, but on the contrary, he was entitled to recover Rs. 634-5-0 as damages from Government. Therefore, he sued for a permanent injunction restraining Government from recovering any amount from him and his sureties and claimed Rs. 634-5-0 as damages from Government.

4. In defending the suit Government denied that they had agreed to provide the Plaintiff with 2 jungals. They contended that they were to supply him with only 1 jungal which they did. They, however, supplied 2 jungals to him on his representations, in order to avoid inconvenience to the public. It was not true that the 2nd jungal supplied by them was unwieldy or difficult to negotiate or was not in good condition. That jungal went out of order due to the remissness of the Plaintiff himself. At any rate it was not true that the Plaintiff suffered any loss on that account. As for petrol cut, the Government denied that they were responsible

o.p. 3

for the cut and they also denied that the Plaintiff suffered any loss on that account.

6. The learned Civil Judge held that there was no agreement by Government to supply 2 jungals to the Plaintiff but that the agreement was to supply him with only 1 jungal which they did and that, at any rate, the Plaintiff did not prove any loss due to non-supply of the 2nd jungal. He further held that Government could not be held responsible for cut in petrol rations and that the Plaintiff did not prove any loss on that account. In the result, the Plaintiff's suit was dismissed with costs. The Plaintiff has now come in appeal.

6. The issues for decision, therefore, are:-

(1) Whether the Plaintiff has proved that Defendant-Government was to supply him with two jungals?

(2) If issue no.1 in the affirmative, whether the Plaintiff has proved that he suffered loss on account of non-supply of the 2nd jungal and, if so, to what extent?

(3) Whether the Plaintiff can claim damages from Defendant-Government for petrol cut?

(4) If issue no.3 in the affirmative, whether the Plaintiff has proved that he substained loss by reason of petrol cut and, if so, to what extent

(6) What reliefs, if any, is the Plaintiff entitled to?

7. Agreeing with the learned trial Judge I find all the issues against the Plaintiff.

* o.p. 4

8. The allegation of the Plaintiff that the Defendant-Government had agreed to supply him with 2 jungals is given a lie to by the conditions to the contrary set out in the Note below the Jahirnama (proclamation of sale) which contains all the terms and conditions subject to which this

ferry and the other ferries were formed out by auction sale in the material year. The Note below the Jahirnama unequivocally provides (Vide page 5 of exhibit no.61).

" One jungal as a minimum with the required number of boats and platform for the same will be supplied by Government and these shall be maintained in good order by the ferry farmer. If possible, a 2nd jungal with assessories will be supplied by Government. If the ferry farmer uses additional jungal with jungal boats other than the one supplied by the Government, the same shall be got passed by the Executive Engineer, or his subordinate and no rent shall be paid thereof".

This shows clearly that Government undertook to supply only one jungal, that the supply of the 2nd jungal by Government was at their discretion and that in case Government did not supply the 2nd jungal the ferry farmer was to use his own jungal after getting it passed by the Executive Engineer, or his subordinate without liability to pay rent in respect of it. The Plaintiff admits that this jahirnama was read out by the Overseer before the auction-sale. It is, however, contended on behalf of the Plaintiff that in the agreement deed taken by Government from the Plaintiff(Vide page 33 of exhibit no.63) and also in the statement read out at the time of the auction-sale (Vide page 15 of exhibit 61) it is mentioned that 2 jungals should be run on this ferry. It is, therefore, urged that Government was to supply 2 jungals to the Plaintiff. There is no substance in this contention. The mention of 2 jungals in these documents does not at all mean, nor can be interpreted as meaning, that Government was to supply 2 jungals. These documents must be read along with the Note in the Jahirnama to which I have already referred above and, if so read, the meaning is clear, viz., that on this ferry the ferry farmer should run 2 jungals out of

* o.p. 5

which 1 would be supplied by Government andthe other would either be supplied by Government at their discretion or should be arranged for by the ferry farmer himself. No doubt Government subsequently supplied a 2nd jungal to the Plaintiff, but it was supplied in the exercise of their discretion, in order to avoid inconvenience to the public, after repeated representations made by the Plaintiff. But it would not at all mean that there was liability on the part of the Government to supply the 2nd jungal. I, therefore, find issue no.1 in the negative.

8. In view of the negative finding on issue no.1, issue no.2 does not survive. However, even on the assumption thatGovernment was bound to supply him with 2nd jungal, the Plaintiff has not proved that he suffered any loss on that account. He alleged that as he was required to work only 1 jungal, buses were required to wait for hours together at the ferry and, therefore, they diverted their route and did not cross the ferry or kept connecting buses on both the sides of the ferry to carry passengers, with the result that he suffered loss. He further alleged that though Government subsequently supplied him with a 2nd jungal, the situation did not improve, inasmuch as the jungal in question was unwieldy and difficult to negotiate and was not in good working condition. So far as this second allegation is concerned it is at once falsified by the evidence of 2 Government witnesses, viz., Dattatraya (exhibit no.75) and Narayan Rao (exhibit 78) who were the Overseer and Deputy Engineer respectively. Their evidence shows that the 2nd jungal supplied by Government was in good working condition and that it went out of order on account of the Plaintiff's negligence in trans-shipping loaded buses on the jungal. Their evidence receives support from the

endorsements made by these officers in the visitors' book exhibit no.60. The Plaintiff on his side examined 2 witnesses Govind (exhibit 71) and Narsimha (exhibit no.72). Exhibit no.71 stated that he was plying 2 trucks by that route in the material year, that he used to see passengers and buses waiting for hours together at this ferry and that, therefore, the buses either diverted their route or kept connecting buses on both the sides of the ferry. This witness hasnot been believed by the learned trial Judge and I see no reason to differ from his appreciation. The witness admitted that he hi self never diverted his own buses to any other route. He confessed that he could not say who so diverted. The next witness exhibit no.72 stated that as only one jungal was working at this ferry motor vehicles and passengers were required to wait for several long hours and that he ventilated the public grievance in the issue of a Local Weekly dated 6th April 1948 in the pen-name K.N.Rao. The learned trial Judge has not believed this witness either and has observed that the article in the Weekly published by this witness was on 6th April 1948 after the Plaintiff's contract period was over and it was very likely that the article was inspired by the Plaintiff in order to create evidence in this favour. I do not see any reason to come to a different conclusion. It was admitted by the Plaintiff that the buses of 3 motor companies - United Karnatak Transport, Chitrapur Express and Kalburgi Service - ply by this route. He has not examined any persons from any of these motor companies to state that they were inconvenienced at the ferry or that they diverted their route or kept connecting buses on both the sides of the ferry. The Plaintiff did not even get produced the log books of those companies. He relied upon his own account-book (exhibit 62) to show that there was a fall in his earnings. The learned Civil Judge has

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#

rightly disbelieved the entries in this account-book. The endorsements made by the officers of the Public Works Department, in the account-book as well as in the Visitors' book (exhibit 60) from time to time would sho clearly that the account-book was not written by the Plaintiff from day to day and was not produced for inspection before the Public Works Department Officers at the specified periods. The Plaintiff himself admitte

" Till 30th May I did not write accounts. On 4th June I first presented it .* * * on 28th 29th and 30th of June 1947. I had not kept accounts I had kept jottings and from those are kird w made out".

* o.p. 7

No further proof is required to show that the accounts are unreliable. I hold that the Plaintiff has not prove that he suffered any loss on this account. Therefore, I find issue no. 2 in the negative.

9. Next coming to issue nos. 3 and 4 togeth it is true that there was cut in petrol rations for some time in the material year. But on this account the Plaintiff is not entitled to claim any damages from Defendant-Government. In the jahirnama it is specifically provided,

"Volume of traffic on any particular route cannot be assured. If for any reason any traffic is closed or a closed road is opened or if the ferry farmer suffers any loss for any reasons, he will not be entitled to any remission or refund".

The Plaintiff himself admitted in his evidence,

"No guarantee was given about the volume of or traffic. No assurance was given that petrol would not be cut".

Clearly, therefore, he cannot claim any damages from th

Defendant-Government. However that may be, he has not proved that he suffered any loss on account of petrol cut. As I have said, he did not examine any persons from the 3 motor companies who ply their motors by this route, nor didhe get produced the log books of these companies, to show that these companies had to curtail their bus traffic on account of petrol cut. It is common knowledge that during the petrol reationing motor buses and trucks used to be run on coal gas. The Plaintiff's own witness Govind (exhibit no.71) admitted that motor services resorted to coal gas in the material year. The Plaintiff is admittedly in possession of his receipt books, but he did not produce them before the court.I, therefore, hold that he has not proved any damage by reason of petrol cut, and find issues nos. 3 and 4 in the negative.

10. It follows, therefore, that the Plaintiff cannot evade the liability for the balance which he owes to Government for the ferry contract in the material year. He is, therefore, not entitled to any of the reliefs sought.

11. The learned District Government Pleader has taken a point that the court-fees paid by the Plaintiff are not proper. This objection was urged in the lower court and was overruled (vide exhibit 27). I agree with the view of the lower court. The Plaintiff's claim for injunction comes under section 7(N(c) of the Court-Fees Act and, therefore, the court-fee paid thereon is quite in order and proper.

12. I, therefore, confirm the decree of the lower Court and dismiss the appeal with costs. The pleaders' fees shall be taxed as was done in the lower court.

24th October, 1951.

Sd. B.V.Manjeshwar,
District Judge.

Copied by

" T r u e C o p y "

Compared by

Original
Copy.

Clerk of the Court,
District Court, Kanara, Karwar.

Suits:
Kanara.
For a declaration that Government ~~xxx~~ is not entitled to recover from the plaintiff or his sureties any amount on account of the ferry contract dues and for a permanent injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 6532
Bombay Castle, 28th April 1952.

Read Government Resolution, Legal Department No. 1095, dated the 17th January 1951.

Letter from the District Government Pleader, Kanara No.584, dated the 24th October 1951,

In the Court of the Civil Judge (Senior Division), Karwar.	:	stating that the
Civil Suit No. 166 of 1948.	:	Civil Appeal
Krishna Ramanath Bhat... Plaintiff; vs. The Province of Bombay.. Defendant.	:	No. 225, of 1950 in the suit noted in the margin was decided by the District Judge, Kanara on 24th October 1951, when the following order was passed :-

> I, therefore, confirm the decree of the lower Court and dismiss the appeal with costs. The Pleaders' fee shall be taxed as was done in the lower court.

Letter from the District Government Pleader, Kanara No. 677, dated the 18th December 1951, forwarding uncertified copy of the judgment.

RESOLUTION: The result of the appeal is recorded.

By order of the Governor of Bombay,

original S.W. Dhurandhar.

S.W. Dhurandhar,
Assistant Secretary to Government.

To
The Revenue Department,
The Superintending Engineer, Southern Circle
The Executive Engineer, Kanara Division,
The District Government Pleader, Kanara.

HSP/21/4 Sd/- 24/4